

Oct 13 8 05 AM '04

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Blythe, California)

(Boyce, Louisiana)

(Celoron, New York)

(Wells, Texas)

MB Docket No. 04-388
RM-11089

MB Docket No. 04-389
RM-11090

MB Docket No. 04-390
RM-11091

MB Docket No. 04-391
RM-11092

NOTICE OF PROPOSED RULE MAKING

Adopted: October 6, 2004

Released: October 8, 2004

Comment Date: November 29, 2004

Reply Date: December 14, 2004

By the Assistant Chief, Audio Division:

1. Before the Commission for consideration is a *Notice of Proposed Rule Making* setting forth four proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. With respect to each proposal, the petitioner has stated that he or she will apply for the requested channel, if allotted. Each proposal warrants consideration because it complies with our technical requirements and would serve the public interest. We request comments and/or counterproposals to the following proposals:

A. MB Docket No. 04-388; RM-11089

Petitioner: Linda A. Davidson
2134 Oak Street, Unit C
Santa Monica, CA 90405

Proposal: Allot Channel 239B at Blythe, California, as the community's second local FM allotment.

Community	Present	Proposed
Blythe, California	262B	239B. 262B

Coordinates: 33-37-02 NL and 114-35-20 WL

Additional Information: The proposed allotment of Channel 239B at Blythe can be made without site restriction at the center city coordinates indicated above. Concurrence in the allotment by the Government of Mexico is required because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.-Mexican border. Petitioner states that Blythe is an incorporated city with a population of 12,155 persons.

FCC Contact: Deborah A. Dupont (202) 418-7072

B. MB Docket No. 04-389; RM-11090

Petitioner: Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

Proposal: Allot Channel 222A at Boyce, Louisiana, as the community's second local FM allotment.

Community	Present	Proposed
Boyce, Louisiana	272C3	222A, 272C3

Coordinates: 31-18-54 NL and 92-46-22 WL

Additional Information: Channel 222A can be allotted to Boyce with a site restriction of 12.9 km (8.0 miles) southwest of Boyce at the reference coordinates indicated above. Petitioner states that Boyce is an incorporated city with a population of 1,190 persons. Boyce has its own mayor, post office, volunteer fire department, police department, city offices, and local churches.

FCC Contact: Deborah A. Dupont (202) 418-7072

C. MB Docket No. 04-390; RM-11091

Petitioner: Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, CA 90405

Proposal: Allot Channel 237A at Celoron, New York, as the community's first local FM allotment.

Community	Present	Proposed
Celoron, New York	---	237A

Coordinates: 42-06-24 NL and 79-16-53 WL

Additional Information: The proposed allotment of Channel 237A at Celoron can be made at the reference coordinates indicated above, with a site restriction of 0.4 kilometers (0.2 miles) southeast of Celoron. Concurrence in the allotment by the Government of Canada is required because the proposed allotment is located within 320 kilometers (199 miles) of the U.S.-Canadian border. Petitioner states that Blythe is a village of 1,295 persons, located within the town of Ellicott. Celoron has an elected mayor and village trustees, a village clerk, fire department, elementary school, post office, ZIP code (14720), church and business establishments.

FCC Contact: Deborah A. Dupont (202) 418-7072

D. MB Docket No. 04-391; RM-11092

Petitioner: Charles Crawford
4553 Bordeaux Avenue
Dallas, Texas 75205

Proposal: Allot Channel 254A at Wells, Texas, as the community's second local FM allotment.

Community	Present	Proposed
Wells, Texas	234C2	234C2, 254A

Coordinates: 31-29-35 NL and 94-57-20 WL

Additional Information: Channel 254A can be allotted to Wells with a site restriction of 1.6 km (1.0 miles) west of Wells at the reference coordinates indicated above. Petitioner states that Wells is an incorporated city with a population of 769 persons. Wells has its own mayor, post office, volunteer fire department, city hall, high school, and several local churches.

FCC Contact: Deborah A. Dupont (202) 418-7072

2. Comments, reply comments, counterproposals and other pleadings filed in response to this *Notice of Proposed Rule Making* should reference the docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

3. Interested parties may file comments on or before November 29, 2004, and reply comments on or before December 14, 2004, and are advised to read the Appendix for the proper procedures. Additionally, a copy of any filing should be served on the petitioner.

4. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the

Commission's Rules.¹ This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

5. For further information concerning this proceeding, contact Deborah A. Dupont, the designated FCC contact, at the telephone number indicated above. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in the particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau

¹ See Certification that Section 603 and 604 of the Regulatory Flexibility Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 Fed.Reg. 11549 (February 9, 1981).

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM (TV) Table of Allotments, Section 73.202(b) (73.606(b)) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. The proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.